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No. 91-148

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

O. L. GORE, JR., LILA GORE VAUGHAN, MARIELLA GORE KIMBRELL, GLENDA GORE HAYNES, MARY ELIZABETH BEAN, FRANCES GOODMAN PATTERSON, SUZANNE GOODMAN DAVIS, JAMES PATRICK GOODMAN, MARY HATTIE D. BROOKS, E. EUGENE DAUPHIN, JR., MILDRED DAUPHIN, OXY USA INC., and CRYSTAL OIL COMPANY,
Petitioners,

v.

THE STATE OF LOUISIANA, JOHN B. GREER, JR., PATRICIA B. GREER, WILLIAM H. BROYLES, NELL WILLIAM BROYLES, HARVEY BROYLES, ALBERTA ESKINE BROYLES, E. H. RAILSBACK, BARBARA S. RAILSBACK, JAMES F. WHITE, and VIRGINIA S. WHITE,
Respondents.

On Petition For Writ of Certiorari to The Court of Appeal, Second Circuit, State of Louisiana

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PETITION FOR WRIT OF CERTIORARI

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July 22, 1991

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QUESTIONS PRESENTED FOR REVIEW

The crucial issue which this case presents for review can be summarized in the following juxtaposed questions:

1. Does the riparian owner have a constitutionally-protected property interest in future alluvion under a state's established property law of accretion; or

2. Can a state court, by recharacterizing the alluvial right as a mere "legislative donation" to the riparian owner, enforce new legislation which takes away from the riparian owner the attendant mineral rights in the newly formed alluvion and gives those mineral rights to the state without violation of the Taking Clause?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
OPINIONS BELOW	2
JURISDICTION	3
STATUTES AND CONSTITUTIONAL PROVISIONS	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING WRIT	8
A. The Applicable Decisions of This Court Hold that the Distinguishing Attribute of Riparian Ownership is the Potentiality for Alluvion which is a Protected Property Right That Cannot be Taken Way by this Louisiana Legislation	8
B. Mineral Rights are under Louisiana Law within the Bundle of Rights Comprising Ownership of Riparian Land and the Deprivation of Those Rights in this Case Without Any Public Purpose Justification Violates the Fifth Amendment	15
CONCLUSION	18
APPENDIX	1a

TABLE OF AUTHORITIES

CASES	Page
Bonelli Cattle Company v. Arizona, 414 U.S. 313, 38 L.Ed.2d 526, 94 S.Ct. 517 (1973)	13,14
Cambre v. Kohn, 8 Mart. (N.S.) 572 (1830)	10
County of St. Clair v. Lovingston, 23 Wall. 46, 23 L.Ed. 59 (1874)	9,11,13
Dugan v. Rank, 372 U.S. 609, 10 L.Ed.2d 15, 83 S.Ct. 999 (1963)	16
Griggs v. Allegheny County, 369 U.S. 84, 7 L.Ed.2d 585, 82 S.Ct. 531 (1962)	17
Hughes v. Washington, 389 U.S. 290, 19 L.Ed.2d 530, 88 S.Ct. 438 (1967)	8
Jones v. Hogue, 241 La. 401, 129 So.2d 194 (La. 1960)	12
Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 73 L.Ed.2d 868, 102 S.Ct. 3164 (1982)	17,18
Municipality No. 2 v. Orleans Cotton Press, 18 La. 122 (1841)	11,12
Oregon, ex rel State Land Board v. Corvallis Sand and Gravel Co., 429 U.S. 363, 50 L.Ed.2d 550, 97 S.Ct. 582 (1977)	13,14
Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 67 L.Ed. 322, 43 S.Ct. 158 (1922)	17
Saulet v. Shepherd, 4 Wall. 502, 18 L.Ed. 442 (1867)	9
State v. Placid Oil Company, 274 So.2d 402 (La. App. 1st Cir. 1972), reversed and rendered on other grounds, 300 So.2d 154 (1973)	10
State v. Richardson, 140 La. 329, 72 So. 984 (1916)	15,16
Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155, 66 L.Ed.2d 358, 101 S.Ct. 446 (1980)	17,18

Table of Authorities Continued

Page

STATUTES

28 USCA §1257 3
La. R.S. 9:1151 2,3,5,6,16
La. Civ. Code Art. 499 3,9,10
La. Civ. Code Art. 482 9
La. R.S. 31:6 15
La. R.S. 31:16 16

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On Petition For Writ of Certiorari to The Court of Appeal, Second Circuit, State of Louisiana

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PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioners, O. L. Gore, Jr. et al., pray that this Honorable Court issue a Writ of Certiorari to review the judgment and decree of the Court of Appeal, Second Circuit, State of Louisiana, entered in this cause on January 23, 1991, affirming the judgment of the Twenty-Sixth Judicial District Court of Louisiana in and for Bossier Parish rendered on December 22, 1989, and to remand the cause to said District Court with directions.

OPINIONS BELOW

A declaratory judgment for an interpretation of the Louisiana statute, La. R.S. 9:1151, was sought from the Twenty-Sixth Judicial District Court of Louisiana through a joint motion for partial summary judgment filed by all parties to this suit. The District Court rendered judgment applying the statute on December 22, 1989 (Appendix F, p. 22a).

The District Court's judgment was affirmed by the Louisiana Court of Appeal, Second Circuit. A copy of the opinion and decree of the Court of Appeal is included in Appendix A to this petition, page 1a, and is reported at 574 So.2d 455. Petitioners, OXY USA, Inc. and Crystal Oil Company, filed an application in the Court of Appeal for rehearing, which was denied by order entered on February 21, 1991 (Appendix B, page 18a).

Petitioners timely applied to the Supreme Court of Louisiana for a writ of certiorari or review of the judgment of the Court of Appeal. The Petitioners' applications were denied by orders of the Louisiana Supreme Court entered April 26, 1991 (Appendices C, D, and E, pp. 19a, 20a, and 21a)

JURISDICTION

The judgment of the Court of Appeal was entered January 23, 1991, rehearing was denied February 21, 1991, and by orders entered April 26, 1991, the Supreme Court of Louisiana refused to review said judgment against Petitioners. The judgment of the Court of Appeal, Second Circuit, State of Louisiana, of which review and reversal are here sought, is, under the jurisdictional and procedural system of Louisiana, a judgment of the highest court of the State of Louisiana in which a decision in this case could be had. The judgment is therefore a final judgment within the meaning of the jurisdictional statute, *United States Code*, Title 28, Section 1257.

STATUTES AND CONSTITUTIONAL PROVISIONS

The Louisiana statutes involved for resolution of this case are Louisiana Civil Code Article 499 and Louisiana Revised Statutes, Title 9, Section 1151 (Appendices I and G, p. 26a and 24a). The provision of the United States Constitution is the Fifth Amendment's protection—"nor shall private property be taken for public use, without just compensation." The Fifth Amendment is made applicable to the State of Louisiana through the Fourteenth Amendment of the United States Constitution.

STATEMENT OF THE CASE

This proceeding requested the Louisiana courts to determine the ownership of land and the attendant mineral rights in a 160-acre oil and gas unit so that the appropriate distribution of the proceeds of production from the unit well could be made. The unit area is traversed by the bed of the Red River, a navigable waterbody. In the years immediately prior to the drilling of the unit well, the Red River had moved westward into the middle of the unit area, eroding the riparian lands of the owners on the west and leaving behind lands formed by accretion to the owners on the east. Petitioners (sometimes hereinafter the "Riparian Owners") are the owners[1] of those lands formed by accretion east of the river.

The following illustration of the unit area depicting the river's movement is shown in the opinion of Louisiana Court of Appeal, Second Circuit (Appendix A, p. 3a, hereinafter the "Unit Illustration"):

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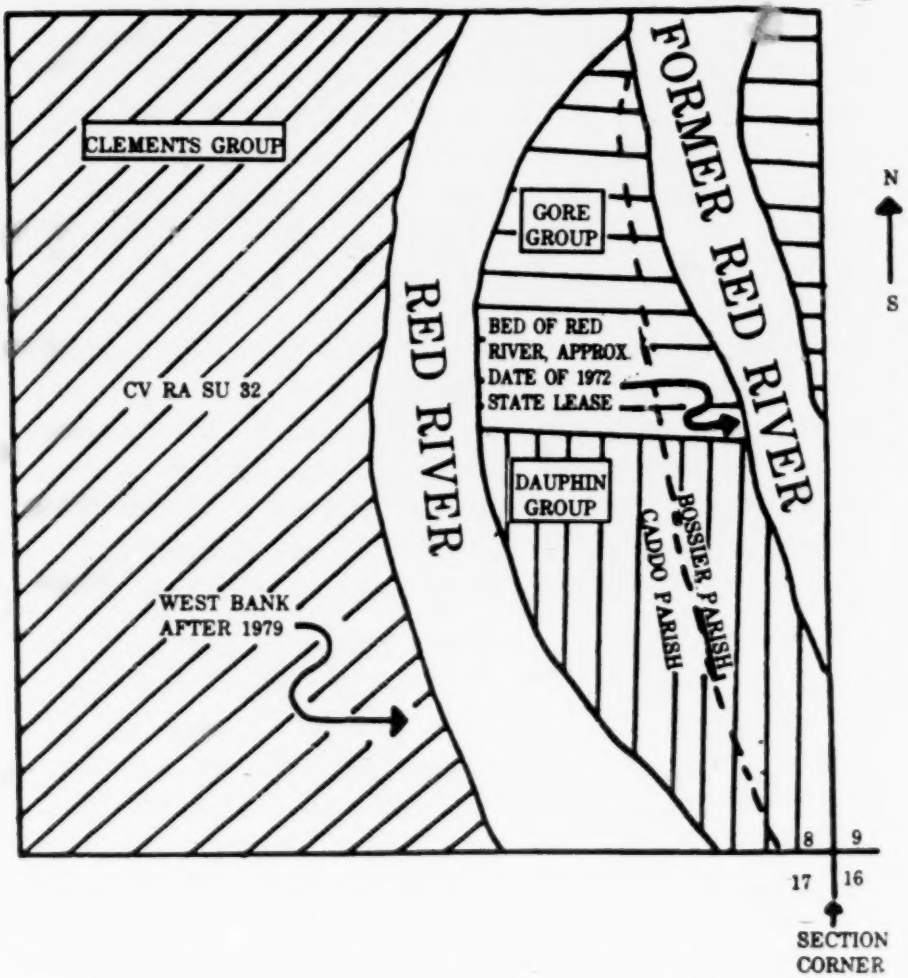
[1] Petitioners, OXY USA, Inc. and Crystal Oil Company, own oil and gas leases granted by the remaining petitioners over the riparian lands at issue. The parent corporations and subsidiaries of these corporations are OXY Oil and Gas USA, Inc., Occidental Oil and Gas Corporation, Occidental Petroleum Investment Co., Occidental Petroleum Corporation, Citco Union Texas Petroleo do Brasil Ltda., and Vermillion Bay Land Company.

BOSSIER AND CADDO PARISHES, LOUISIANA
SE 1/4, SEC. 8, T 23 N, R 14 W



Though the Louisiana property law governing riparian rights to the land and the State's ownership of the bed of navigable rivers is undisputed by the parties, this action sought a declaratory judgment for the determination of the effect of a relatively modern statute, La. R.S. 9:1151 (Appendix G, p. 24a, hereinafter the "Statute"). The Statute purports to change

the historic regime of riparian ownership in certain cases by denying the riparian landowner the attendant mineral rights in new accretion which forms as a result of the movement of a navigable river. The Statute provides that "where a change occurs in ownership of land . . . as a result of accretion", the riparian owner who acquires the land left by the river's movement "shall take the same subject to and encumbered with" any preexisting mineral lease and royalty rights of the State of Louisiana (hereinafter the "State") which had previously applied to the riverbed before the movement of the river's course (Appendix G, p. 24a). In the natural shift of land from riverbed (sovereign ownership) to alluvion (private ownership) under the law of accretion, the Statute effects a retention by the State of the attendant mineral rights of the former riverbed.

The stipulated facts concerning the river's movement in this case, as revealed by the Unit Illustration, show that in 1972 the bed of the Red River was located on the eastern side of the unit area (depicted as "Former River Bed" on Unit Illustration). In 1972, the State leased the riverbed for development of oil and gas. While the 1972 State lease under its term provision remains in effect today, the location of the riverbed has moved to an entirely new location. Between 1972 and 1978 the riverbed moved completely out of its 1972 location to approximately the center of the unit area where it is presently located (depicted as "Red River" on Unit Illustration). Nonetheless, the Respondents, including the State, asserted under the Statute that their mineral royalty and leasehold rights in the land formerly comprising the 1972 riverbed

continue to burden the Riparian Owners' rights in that land which is now a part of the eastern alluvion.

The District Court applied the Statute maintaining "the ownership rights of the parties (the Respondents) under the 1972 State lease . . . despite the acquisition of the acreage by other parties (the Petitioners) resulting from the movement of the Red River after November 8, 1972" (Appendix F, p. 22a). The Louisiana Court of Appeal, Second Circuit, (hereinafter the "Louisiana Court"), affirmed the ruling of the District Court. Both state courts in their written opinions rejected the Riparian Owners' claims that their bundle of rights gained under the established law of accretion includes the attendant mineral rights in the new alluvion (the former 1972 riverbed) which cannot constitutionally be taken as a windfall to the State by the force of the Statute. In the opinion of the Louisiana Court (Appendix A, p. 11a):

> "[O]wnership of alluvion is not a vested right, but a legislative donation which may be altered or controlled by the legislature."

The State does not seek to justify this taking of the Riparian Owners' mineral rights in the alluvion as an exercise of a valid police power.

Both state courts also recognized the State's sovereign ownership of the bed of Red River (and the underlying mineral rights) as presently located in the center of the unit area. Therefore, the judgment rewards the State with the rights to the mineral production from two riverbed locations in the unit area—the present "Red River" and the "Former Red River" as depicted on the Unit Illustration.

The Petitioners specifically raised the constitutional issue posed by this case in their briefs and oral arguments to the District Court. As noted in the Louisiana Court of Appeal's opinion, the District Court's written opinion discussed and rejected the Petitioners' constitutional claims that the statute effects a taking of private property by the State without just compensation (Appendix A, p. 8a). Though the Petitioners in the lower courts were divided into three groups and were represented by separate counsel, their methods were consistent and persistent in attacking the constitutionality of the Statute before both lower courts. (See excerpts from Petitioners' briefs in Appendices L, M, N and O, pp. 29a - 32a).

REASONS FOR GRANTING WRIT

A. The Applicable Decisions of This Court Hold that the Distinguishing Attribute of Riparian Ownership is the Potentiality for Alluvion which is a Protected Property Right that Cannot be Taken Way by this Louisiana Legislation.

The Louisiana courts rendering judgment in this case have chosen to ignore the pronouncements of this Court defining the constitutionally-protected nature of the alluvial rights taken from the Riparian Owners. The uniqueness of the riparian owner's inherent right to expect the benefits of accretions formed along his naturally moving boundary has been recognized in "a long and unbroken line of decisions of this Court". *Hughes v. Washington*, 389 U.S. 290, 293, 19 L.Ed.2d 530, 88 S.Ct. 438 (1967). In many of those decisions, this Court reviewed the longstanding civilian regime for riparian ownership traced to the Institutes of Justinian, and such regime under

Louisiana's Civil Code has defined the private ownership of lands formed by the movement of rivers in Louisiana since before statehood. *Saulet v. Shepherd*, 4 Wall. 502, 18 L.Ed. 442 (1867); *County of St. Clair v. Lovingston*, 23 Wall. 46, 23 L.Ed. 59 (1874); La. Civil Code Arts. 482 and 499 (Appendices H and I, pp. 25a and 26a). Nonetheless, rejecting this jurisprudence upholding the essential riparian value which maintains the estate over time in relation to the navigable waterbody, the Louisiana Court, by employing a shallow recharacterization of the established law of accretion as a legislative donation, would allow riparian rights to be subject to rescission through arbitrary legislation.

In *County of St. Clair*, this Court stated:

> "The riparian right to future alluvion is a *vested right*. It is an inherent and essential attribute of the original property. The title to the increment rests in the law of nature. It is the same with that of the owner of a tree to its fruits, and of the owner of flocks and herds to their natural increase. The right is a natural, not a civil one. The maxim 'Qui sentit onus debet sentire commodum' lies at its foundation. The owner takes the chances of injury and of benefit arising from the situation of the property. If there be a gradual loss, he must bear it; if a gradual gain, it is his." (Emphasis added) *Id.*, 23 L.Ed. at 64.

The concept of "future alluvion" as seen in this explanation is clearly ownership and not a mere expectation or hope for the vesting of property in the future. Unlike non-riparian property with fixed bound-

aries, a riparian tract's boundary on the watercourse is inherently subject to movement. The potentiality for future accretion is presently vested within the unique bundle of rights comprising riparian ownership. As expressed by the Louisiana Supreme Court in one of its earliest opinions discussing alluvion, "the portion thus added is not considered as new land; it is a part of the old". *Cambre v. Kohn*, 8 Mart. (N.S.) 572, 577 (1830).

Despite this established definition of riparian ownership, the Louisiana Court's rationale for its decision was based upon the contrary view that legislation can operate prospectively to take away the yet-to-be formed alluvion. The opinion cited the following headstrong quotation from another Louisiana court of appeal:

> "The Louisiana Legislature could have repealed *in toto* Louisiana Civil Code Article 509 (now Civil Code Article 499, Appendix I, p. 26a), following the effective date of which legislative repeal alluvion would remain the property of the State instead of becoming the property of the riparian landowners." *State v. Placid Oil Company*, 274 So.2d 402, 419 (La. App. 1st Cir. 1972), reversed and rendered on other grounds, 300 So.2d 154 (1973).

These expressions by the Louisiana courts unabashedly conflict with decisions of this Court.

The Louisiana Court's view that ownership of future alluvion is not a vested right also inexplicably ignores the 1841 decision of the Louisiana Supreme Court which addressed a factual setting surprisingly

analogous to that underlying this dispute. In *Municipality No. 2 v. Orleans Cotton Press*, 18 La. 122 (1841), the court determined the rights to alluvion property which had formed from the movement of the Mississippi River after the 1805 incorporation of the riparian land into the New Orleans city limits. The city claimed that the passage of the 1805 act of the territorial legislature which brought the previously rural riparian lands into the city's jurisdiction caused prospectively the loss of the accession right for all alluvion formed thereafter.

The Louisiana Supreme Court responded to the city's argument as follows:

> "Will it be said that the right to future alluvial formations is not a vested right? I answer that such right is inherent in the property itself and forms an essential attribute of it, resulting from natural law in consequence of the local situation of the land, just as much as the natural fruits of a tree belonging to the owner of the land; and that such an attempt to transfer from the owner of the land to the city, the future increase by alluvion, would be as legally absurd, as if the legislature had declared, that after the incorporation of the city, the fruits of all the orange trees within its limits should belong thereafter to the city and not to the owners of the orchards and gardens." *Id.*, pp. 213 and 214.

This Court cited *Orleans Cotton Press* in *County of St. Clair*, holding that the right to future alluvion is a vested right.

The Louisiana Court simply ignored the ruling of *Orleans Cotton Press* and attempted to justify its discrediting of the right to future alluvion by seizing upon a figurative expression employed by the Louisiana Supreme Court as dictum in another decision where the issue of the vested nature of the right was not in dispute. In *Jones v. Hogue*, 241 La. 401, 129 So.2d 194 (La. 1960), the dispute involved the difficult issue of division and apportionment of a large expanse of alluvion acreage which bordered on separately owned riparian tracts. Though the alluvion was clearly recognized as vested in the riparian owners, the parties' squabble over the division of the land prompted the court to remind them that the alluvion was like a "legislative donation" which should be divided equitably. *Id.*, 129 So.2d 202. Taking an equitable apportionment view, the court proceeded to formulate a division of the new alluvion and the all-important frontage on the river so as to proportionately maintain the frontage rights of the riparian tracts which had existed before the formation of the alluvion.

The *Jones* decision hardly divests riparian owners of their potential for alluvion, but to the contrary, seeks to fairly maintain the riparian front tracts in such a way as to *protect* the continued rights of riparian owners to future alluvial deposits. Leaping over the logic of *Jones* to its constitutionally frail metaphor loosely employed in dictum, the Louisiana Court in this case decrees that "ownership of alluvion is not a vested right but a legislative donation". Surprisingly, this decree ignores altogether the established rule of constitutional law, never once acknowledging the pronouncements of this Court and the Louisiana

Supreme Court directly to the contrary that "future alluvion is a vested right".

The only reference in the Louisiana Court's opinion to the jurisprudence of this Court was a summary dismissal of the implications of the *Bonelli/Corvallis* decisions of the 1970's. *Bonelli Cattle Company v. Arizona*, 414 U.S. 313, 38 L.Ed.2d 526, 94 S.Ct. 517 (1973) and *Oregon ex rel State Land Board v. Corvallis Sand and Gravel Company*, 429 U.S. 363, 50 L.Ed.2d 550, 97 S.Ct. 582 (1977). The *Bonelli* decision was cited to the Louisiana Court because of the following summary statement of the prevailing doctrine of accretion which this Court recognized as the substantive property law in most states, including Louisiana:

> "Riparianness also encompasses the vested right to future alluvion, which is an 'essential attribute of the original property.' *County of St. Clair v. Lovingston*, 23 Wall. 46, 58, 23 L. Ed. 59 (1874). By requiring that the upland owner suffer the burden of erosion and by giving him the benefit of accretions, riparianness is maintained. Finally, there is a compensation theory at work. Riparian land is at the mercy of the wanderings of the river. Since a riparian owner is subject to losing land by erosion beyond his control, he should benefit from any addition to his lands by the accretions thereto which are equally beyond his control." *Id.*, 414 U.S. at 326.

This law of accretion was applied in *Bonelli* as "federal common law" to overrule a decision of the Arizona courts which, under a state law rule of avulsion,

had awarded to the State of Arizona, rather than the riparian owner, exposed land adjacent to a river.

Though *Corvallis* expressly overruled *Bonelli's* application of federal common law and made clear that a state may reach its own conclusions concerning its substantive law of accretion and avulsion, *Corvallis* did not reject *Bonelli's* summary of the prevailing doctrine of accretion, as quoted above. Once a state incorporates accretion as a principle within its riparian property regime, the future expectancy of alluvion becomes a vested property right. (See Justice Stewart's dissenting opinion in *Bonelli, supra*, 414 U.S. at 337.)

Failing to quote *Bonelli's* statement that future alluvion is a vested right, the Louisiana Court simply dismissed *Bonelli* as having been overruled by *Corvallis*. In the process, the court summarized *Corvallis* as follows, blindly quoting this Court's oblique reference to the key constitutional constraint upon state property law which the Louisiana Statute presently violates:

> "The court (*Corvallis*) held that state law governs issues relating to riparian property, like other real property, 'unless some other principle of federal law requires a different result.' *Corvallis*, 97 S.Ct. at 591. The present case presents no such principle requiring application of federal law. The law of the State of Louisiana is to be applied." (Appendix A, p. 10a and 11a)

The federal law which the Louisiana Court refuses to see is the Fifth Amendment to the United States Constitution.

B. Mineral Rights are under Louisiana Law within the Bundle of Rights Comprising Ownership of Riparian Land and the Deprivation of Those Rights in this Case Without Any Public Purpose Justification Violates the Fifth Amendment.

Under Louisiana's general property laws, the land which a riparian owner gradually acquires by accretion includes "the exclusive right to explore and develop his property for the production of . . . minerals and to reduce them to possession and ownership" (La. R.S. 31:6, Appendix J, p. 27a). As early as 1916, in *State v. Richardson*, 140 La. 329, 72 So. 984, the Louisiana Supreme Court recognized not only the riparian owner's right to the production of oil from alluvion land lying adjacent to the Red River but also that such rights are protected against claims by the State. In response to the State's claim to the mineral production from the alluvion, the court stated:

> "[B]atture and alluvion, lying between the banks of navigable rivers, below the ordinary stages of high water, have been, for a century and more, occupied, leased, mortgaged, sold, and litigated over, as property the title to which was vested in individuals and private corporations; that, in no case, has this court ever held, or intimated, that an alluvion which was shown to appear above the surface of the water, at its ordinary stage, with a reasonable appearance of permanence and identification with the soil of the shore, was part of the bed of the river, or for that, or any, reason was not susceptible of private ownership. . . . " *Id.*, 140 La. at 350.

Under the language of the Statute now at issue, which was enacted in 1952, Louisiana's law would be changed to impose upon the "new owner" (the riparian owner) of the alluvial acreage the mineral lease previously granted by the State on the same land as riverbed before its natural transformation into alluvion. Such a lease is a mineral right or real right encumbrance upon the land under Louisiana law (La. R.S. 31:16, Appendix K, p. 28a). The Statute, therefore, causes the riparian owner's attendant mineral rights in the new alluvion to be fully subordinated and lost to the State's leasehold rights. The result in this case, erasing the rule of *Richardson*, awards the State the rights under its 1972 mineral lease over land that is now alluvion owned by the Riparian Owners. The economic benefit and value of the minerals in the newly formed alluvion have, by the force of the Statute, been appropriated for the State and its leasehold estate. Cf. *Dugan v. Rank*, 372 U.S. 609, 10 L.Ed.2d 15, 83 S.Ct. 999 (1963).

Since the Statute's effect is tied arbitrarily to whether a state mineral lease is in existence at the time alluvion is formed, some alluvial land formed after the effective date of the 1952 Statute belongs to the Louisiana riparian owner with the minerals fully intact, while other such land is acquired by the riparian owner subject to a protected State leasehold estate. Indeed, this disparity is reflected in this case. As shown by the Unit Illustration, portions of the alluvial acreage lying east of the present riverbed have been recognized as owned by the Riparian Owners with all attendant mineral rights, including the land between the locations of the former 1972 bed and the present bed where the river became stabilized

after 1978. Only that portion of the alluvion which formerly was riverbed on the date of the State's 1972 lease is affected by the commandeering force of the Statute which awards the State the mineral windfall. The Unit Illustration is the picture of an anomaly where the State has been awarded the economic advantages of the minerals to two riverbeds—one, its sovereign bed of ownership where the river is actually located, and the other, the fictitiously preserved former bed imposed over the land which is now owned otherwise by the Riparian Owners.

As seen by the above summary of Louisiana law, the riparian owner's inherent right to minerals in alluvion is no less, as stated by Justice Holmes in *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, at 414, 67 L.Ed. 322, 43 S.Ct. 158 (1922), "an estate in land,—a very valuable estate", which may not be taken through the effect of legislation. Unlike *Pennsylvania Coal*, the State of Louisiana offers no police power justification for the statute but simply likens the plunder to reneged charity. This arbitrary use of governmental power for the appropriation of an economic incident or fruit of property falls, therefore, in the category of other similar state takings which this Court has historically held to be thwarted by the Fifth Amendment's guarantee. *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 66 L.Ed.2d 358, 101 S.Ct. 446 (1980); *Griggs v. Allegheny County*, 369 U.S. 84, 7 L.Ed.2d 585, 82 S.Ct. 531 (1962). Moreover, since the recognition of the State's leasehold right over the lands of the Riparian Owners can allow for the State's physical occupation of that land for the drilling of other oil and gas wells, a "physical occupation" taking has effectively occurred. *Loretto*

v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 73 L.Ed.2d 868, 102 S.Ct. 3164 (1982).

CONCLUSION

In each decision by this Court concerning the Taking Clause, the line is draw which determines whether the impact of governmental power upon private property amounts to a taking of property within the ambit of the Fifth Amendment's protection. In this case the unique nature of the property at risk—the developing alluvion land—has afforded the Louisiana Court the opportunity to obscure and discredit its value as protected private property by holding that as the land is naturally formed the economic benefit of the mineral rights can be retained by the State. The essential attribute of this property, however, has never been previously devalued in any manner by this Court or the Louisiana Supreme Court which have held that "future alluvion is a vested right". The property right at issue has not been eroded away by the passage of time since this holding was first pronounced. The right of the riparian owner under Louisiana law has historically included the right to the mineral production in newly formed alluvion. Petitioners respectfully submit, therefore, that the Louisiana Court in holding that "alluvion is not a vested right" has crossed the line into the protected zone of the Fifth Amendment. As expressed in *Beckwith*, "[t]his is the very kind of thing that the Taking Clause of the Fifth Amendment was meant to prevent". *Beckwith, supra*, at 164, 66 L.Ed.2d at 367.

For the reasons stated, a writ of certiorari should be granted in this case to review the judgment ren-

dered January 23, 1991 by the Court Appeal, Second Circuit, State of Louisiana.

Respectfully submitted,

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APPENDIX

APPENDIX A

No. 21,998-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

JANUARY 23, 1991

CITIES SERVICE OIL AND GAS CORPORATION, ET AL.,
Plaintiffs-Appellants

v.

THE STATE OF LOUISIANA, ET AL,
Defendants-Appellants

Appealed from the Twenty-Sixth Judicial District Court for the Parish of Bossier, Louisiana

Before: Marvin, Lindsay and Hightower, JJ.

LINDSAY, JUDGE

This appeal arises from the rendition of a partial summary judgment in a concursus proceeding invoked to determine ownership of about $15,000,000 in mineral revenues from a 160-acre unit in Caddo and Bossier Parishes. Three groups of litigants appeal. Three other groups of litigants answer the appeals. For the reasons expressed herein, we affirm the trial court judgment.

FACTS

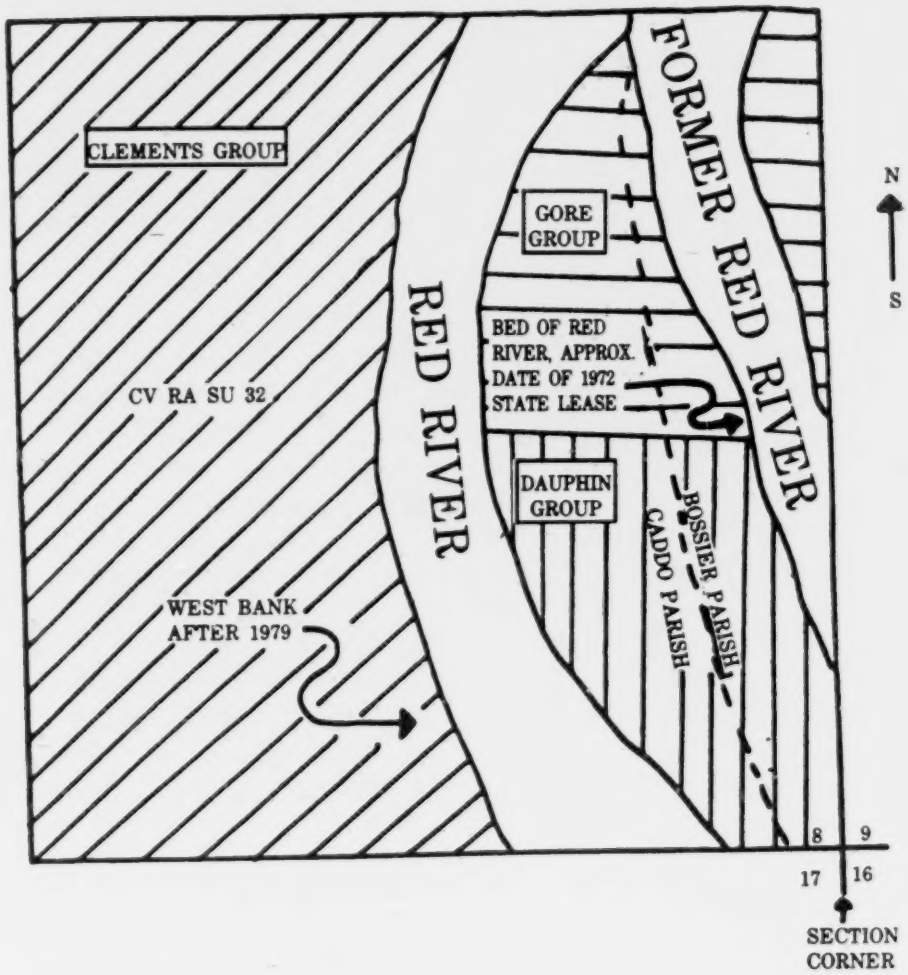
In 1981, the Louisiana Office of Conservation unitized an area which it designated as Unit CV RA SU 32. This unit is located in the south-east quarter (SE/4) of Section 8, T23N, R14W. Furthermore, it lies within the flood plain of the Red River near the boundaries between Caddo and Bossier Parishes. In 1982, the Operators jointly drilled the Clements "B" No. 1 Well as the unit well.

In 1985, the Operators filed this concursus proceeding to determine ownership of the revenues produced from Unit CV RA SU 32. Distribution of these proceeds is complicated by the westward movement of the river between 1966 and 1978, which changed the ownership of the surface of the land. The river moved west from Section 9, T23N, R14W into the southeast quarter of Section 8, T23N, R14W. This movement was halted by revetment work done by the Army Corps of Engineers in 1979.

Seven different groups of litigants claim various interests in the mineral revenues at issue. These litigants are the State, the Operators, the Greer Group, the Clements Group, the Gore Group, the Dauphin Group and the Mobley Group.

The schematic drawing below, which is based upon Joint Exhibit #15, generally illustrates the movement of the river from east to west. Reference to this illustration may also be somewhat helpful in appreciating the general positions of the respective parties. The area claimed by the Clements Group is marked with diagonal (/) lines. The area claimed by the Gore Group is marked with horizontal (—) lines, while the area claimed by the Dauphin Group is designated with vertical (|) lines.

BOSSIER AND CADDO PARISHES, LOUISIANA
SE 1/4, SEC. 8, T 23 N, R 14 W



The claims of the State of Louisiana are based upon its ownership of the bed of the Red River. The Greer Group's interest arises from a lease granted to it by the State in 1972 which covered the river bed.

The Clements Group owned property which was west of the river as it existed in 1972. The Gore Group and the Dauphin Group claim ownership of contiguous riparian

land east of the 1972 river bed. (The Gore Group owns the northern section of this land while the Dauphin Group owns the southern section.) The Mobley Group claims interests derived from members of the Clements Group and the Gore Group.

Additionally, the Operators, the companies who invoked the concursus proceeding (Cities Services Oil & Gas Corporation, now OXY USA, Inc., and Crystal Oil Company), also claim mineral interests obtained from members of several of the other groups.

During the time the river moved westward, the lands claimed by the Clements Group were subject to two different mineral leases. One of these leases was granted in 1963 and expired in 1973. The other was granted in 1974 and expired in 1978. Both were recorded in Caddo Parish. In March of 1980, during the drilling of the unit well, four mineral leases were executed by members of the Clements Group. These leases covered all of the SE/4 of Section 8 lying *west* of the river and were recorded in both Bossier and Caddo Parishes. In December, 1980, Mission Plantation, Inc., a faction of the Clements Group which was the record owner of land lying west of the river since 1978, executed a mineral lease which purported to cover all of the SE/4 of Section 8. It was recorded in both parishes.

At all times, the State owned the river bed below the ordinary low water mark in Sections 8 and 9. On November 8, 1972, the State granted State Lease 6002 to the Greer Group. This lease covered the riverbed.[1]

On June 26, 1989, the parties filed a joint motion for partial summary judgment, seeking resolution of the basic liability issue under LSA-R.S. 9:1151, the so-called "Freeze Statute". They specifically reserved for trial all disputed issues and the issue of quantum. In furtherance of the

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[1] This 1972 lease (State Lease 6002) has been maintained by other production not relevant to this suit.

joint motion for partial summary judgment, the parties entered into detailed stipulations of fact.

After the case had been submitted for decision, the trial court handed down written reasons for judgment. In its written opinion, the trial court found that the State Lease did not move westward with the river. The court held that the State Lease continued to affect the old riverbed. In so holding, the court relied upon the language of the State Lease itself:

> "All the lands *now* or *formerly* constituting the beds and bottoms of all water bodies of every nature and description and all islands and other lands formed by accretion or reliction, except tax lands, *owned by* and not under mineral lease from the *State of Louisiana on September 1, 1972*, situated in Bossier and Caddo Parishes . . . " [Emphasis added by the trial court]

As to the Clements Group, the trial court found that since its leases were only recorded in Caddo Parish, they did not affect Bossier Parish property as to third persons. As a consequence of this application of the public records doctrine, when the Gore and Dauphin Groups acquired the property east of the river as the river moved westward, their acquisitions were in full ownership up to the Bossier Parish line (except for the former riverbed which was covered by State Lease 6002).

The trial court found that the Freeze Statute only applied where: (1) ownership of the land changed as a result of the movement of the river; *and* (2) an oil and gas lease existed on the newly acquired land, under the terms of which the former owners, lessors, lessees, royalty owners and mineral owners had already acquired rights. In the absence of a lease, the land acquired by accretion came to the new owner in full ownership. However, if the land was acquired subject to a lease, the rights of the lessees and lessors were protected only for as long as the lease

continued to be in effect. Upon expiration of the lease, all mineral rights reverted to the new owner who had acquired the surface of the property by accretion.

Applying this interpretation to the facts before it, the trial court determined that, upon the expiration of the 1974 Clements lease in 1978, the mineral rights of the Clements Group in the new riverbed expired. Since that time, the State has owned the new riverbed free of the Clements lease. The expiration of the Clements lease in 1978 also allowed the Gore and Dauphin Groups to acquire the Caddo Parish property east of the new riverbed in full ownership. (This was in addition to its acquisition, in full ownership, of the Bossier property previously mentioned.) The trial court held that the 1980 Clements lease now affects only the Caddo Parish property *west* of the present riverbed.

Thereafter, a judgment was signed which concisely summarized the trial court's findings, providing that the State Lease applied to the river bed as it existed when the lease was granted in 1972 and that it did not affect the present river bed. However, as to the former riverbed, the Freeze Statute maintained the mineral ownership rights of the parties to the 1972 State Lease. The trial court held that the Freeze Statute did not maintain the mineral rights of the Clements Group to the land acquired by the State in the present riverbed. Nor did the Freeze Statute prevent the Gore and Dauphin Groups from acquiring, in full ownership, the land between the old and new riverbeds.

The Clements Group, the Operators, and the Greer Group all appealed from the trial court judgment. The Gore Group, the Dauphin Group, and the Mobley Group answered the appeals. (Inasmuch as the claims of the Mobley Group are entirely derived from members of other groups, we will not address its claims separately.)

The parties have presented a variety of assignments of error. These assignments of error present the following issues for resolution:

> (1) the trial court erred in finding the Freeze Statute constitutional;
>
> (2) the trial court erred by going beyond the scope of the joint motion for partial summary judgment by ruling that the State Lease does not affect the present riverbed; and
>
> (3) the trial court erred in its application of the Freeze Statute to the stipulated facts.

CONSTITUTIONALITY OF FREEZE STATUTE

Several of the parties have attacked the constitutionality of LSA-R.S. 9:1151, which is commonly known as "the Freeze Statute". They argue that the application of the statute results in an unconstitutional taking of the riparian landowners' rights to acquire future alluvion, a vested right. The parties supporting the constitutionality of the statute contend that future alluvion is a legislative donation which the legislature may choose to alter, and that the Freeze Statute is a valid exercise of this legislative prerogative.

LSA-R.S. 9:1151 provides as follows:

> In all cases where a change occurs in the ownership of land or water bottoms as a result of the action of a navigable stream, bay or lake in the change of its course or bed, or as a result of accretion, dereliction, or other condition resulting from the action of a navigable stream, bay or lake, the new owner of such land or water bottoms, including the state of Louisiana, shall take the same subject to and encumbered with any oil, gas and/or mineral lease covering and affecting such lands or water bottoms, and sub-

> ject to the mineral and royalty rights of the lessors in such lease, their heirs, successors and assigns, the right of the lessee or owners of such lease and the right of the mineral and royalty owners thereunder to be in no manner abrogated or affected by such change in ownership. [Acts 1952, No. 341, §1.]

In its written opinion, the trial court rejected all claims of the statute's unconstitutionality. In so holding, the court relied upon *State v. Placid Oil Company*, 274 So.2d 402 (La. App. 1st Cir. 1972), reversed and rendered on other grounds, 300 So.2d 154 (La. 1973).

In *State v. Placid Oil Company, supra*, the First Circuit rejected the claims of Placid, which was both the operator and a mineral lessee, that the statute unconstitutionally violated its rights against deprivation of property without due process of law and impairment of contract obligations. The appellate court stated:

> . . . We find no merit in the assertion of unconstitutionality of the statute in question, provided it be given prospective and not retrospective effect. It is clear that but for another statutory provision, namely, Louisiana Civil Code Article 509, the State of Louisiana and not the defendants would own the area comprised of alluvion in controversy herein. There is nothing which precludes the Louisiana Legislature from prospectively modifying by subsequent legislation such as Act 341 of 1952, LSA-R.S. 9:1151, the effect which would otherwise obtain by virtue of Civil Code Article 509. There is nothing discriminatory in the 1952 legislative act in question, as it applies equally in favor of or against the State as it does in favor of or against private landowners. The Louisiana Legislature could have repealed *in toto* Louisiana Civil Code Article 509,

> following the effective date of which legislative repeal alluvion would remain the property of the State instead of becoming the property of the riparian landowners. The fact that the 1952 legislative act in question simply modifies the effect of, rather than repeals entirely, Louisiana Civil Code Article 509, does not gainsay its constitutionality when applied prospectively. . . .[2]
>
> 274 So.2d at 419

On original hearing, the Supreme Court briefly discussed the constitutional challenge and stated that:

> The Court of Appeal correctly rejected this contention and found Act 341 of 1952 constitutional and applicable in this case.[3]
>
> 300 So.2d at 166

The constitutionality of this statute was addressed by LSU Law School Professor Lee Hargrave, the Legal Re-

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[2] Former Civil Code Article 509 was replaced by present Article 499 in 1980. The present article provides as follows:

> Accretion formed successively and imperceptibly on the bank of a river or stream, whether navigable or not, is called alluvion. The alluvion belongs to the owner of the bank, who is bound to leave public that portion of the bank which is required for the public use.
>
> The same rule applies to the dereliction formed by water receding imperceptibly from a bank of a river or stream. The owner of the land situated at the edge of the bank left dry owns the dereliction.

The revised article reproduced the substance of Article 509 and did not change the law.

[3] On rehearing, the Supreme Court reversed its holding as to the classification of the water body involved in the litigation and rendered the constitutionality of the statute moot. However, there was no indication that the court had modified its view that the statute was constitutional.

search Coordinator of the Louisiana Constitutional Convention of 1973, in his law review article, *"Statutory" and "Horatory" Provisions of the Louisiana Constitution of 1974*, 43 La. Law Review 647, 661-662 (1983). He wrote:

> Although the convention did not adopt provisions similar to Louisiana Revised Statutes 9:1151, [footnote omitted] which provides that rights under outstanding mineral leases are not affected by changes in ownership resulting from changes in water bodies, the statute remains in effect and is not prohibited by the constitution. Nothing is taken from the riparian landowner who has gained land by accretion if he obtains the land without the mineral rights; he had no vested interest in the land to begin with. Article IX, section 3 does not prohibit the state, which obtains land by dereliction, from obtaining less than full ownership, as no alienation or authorization of alientation [sic] has occurred.

In *Jones v. Hogue*, 241 La. 407, 129 So.2d 194 (1960), the Supreme Court held that ownership of alluvion is a legislative donation to the riparian proprietor without which it would be public property, and consequently it is a pure gratuity by the state to the riparian proprietor.

The parties opposing the constitutionality of the statute cite *Bonelli Cattle Company v. Arizona*, 414 U.S. 313, 94 S.Ct. 517, 38 L.Ed.2d 526 (1973), in support of the proposition that under federal law the right to future alluvion is a vested right. However, *Bonelli* was overruled in *Oregon ex rel State Land Board v. Corvallis Sand and Gravel Company*, 429 U.S. 363, 97 S.Ct. 582, 50 L.Ed.2d 550 (1977). The court held that state law governs issues relating to riparian property, like other real property, "unless some other principle of federal law requires a different result." *Corvallis*, 97 S.Ct. at 591. The present case presents no such principle requiring application of federal law.

The law of the State of Louisiana is to be applied. As stated above, the Louisiana Supreme Court has held, in *Jones v Hogue, supra*, that ownership of alluvion is not a vested right, but a legislative donation which may be altered or controlled by the legislature.

Based on the foregoing, we find that the Freeze Statute is constitutional within the context of this case. This assignment of error has no merit.

APPROPRIATE SCOPE OF TRIAL COURT RULING

The Greer Group and the Operators contend that the trial court erred in finding that State Lease 6002 does not affect the present riverbed. They contend that such a finding exceeds the scope of the joint motion for partial summary judgment and that it disregards the State's admissions to the contrary in its pleadings and briefs.

Scope of Motion

The parties who oppose the trial court's ruling that the State Lease does not cover the present riverbed argue that the only issue before the court on the joint motion for partial summary judgment was the application of R.S. 9:1151. They argue that the application of the Freeze Statute only concerned the Gore and Dauphin Groups, and that the issue of the ownership of the present riverbed did not involve any interpretation or application of the Freeze Statute.

We disagree. While it is true that the trial court was required to address the issue of the Freeze Statute's effect on the property owned by the Gore and Dauphin Groups, the trial court was also required to determine the effect of the State Lease after the movement of the river. The trial court was required to determine whether the lease remained with the old riverbed, whether it moved to the *present* riverbed or encompassed all land *between* the old

and the new riverbeds. Thus, a thorough resolution of the effect of the Freeze Statute on the property at issue required a determination of the current status of the mineral ownership of the new riverbed.

Judicial Confession

Additionally, the Operators and the Greer Group argue that the trial court ruling on this issue ignores the judicial admissions and confessions made by the State in its pleadings and briefs. They contend that the State admitted that it had leased all of its mineral interests within the unit to the Greer Group, including its mineral interest in the new bed of the river.

LSA-C.C. Art. 1853 provides:

> A judicial confession is a declaration made by a party in a judicial proceeding. That confession constitutes full proof against the party who made it.
>
> A judicial confession is indivisible and it may be revoked only on the ground of error of fact.

In *Howard Trucking Company, Inc. v. Stassi*, 484 So.2d 915 (La. 1986), cert. denied 479 U.S. 948, 107 S.Ct. 432, 93 L.Ed.2d 382 (1986), the plaintiff argued that the defendants were bound by their "confession" in bankruptcy court proceedings that certain agreements were leases, not contracts of sale. The Supreme Court found Article 1853 inapplicable. It held that a judicial admission or confession is the express acknowledgment of adverse fact. Furthermore, questions of law cannot be confessed or admitted, and the legal characterization of the contracts was "preeminently of that nature."

Under the stipulations presented in the present case, the effect of the 1972 State Lease was clearly a question of law. Therefore, the trial court was entitled to apply the law to the legal documents before it without being hind-

ered by any erroneous assumptions of law by the parties. Additionally, we note that at oral argument the Greer Group specifically renounced any desire for this portion of the case to be returned to the trial court for additional consideration of the effect of the State Lease and the area covered thereby.

This assignment of error has no merit.

EFFECT OF THE FREEZE STATUTE

Although the various parties list numerous additonal assignments of error, we find that they all embody the same basic issue - the actual effect of the Freeze Statute on the stipulated facts. We generally summarize the contentions of the parties as follows.

The Clements Group

The Clements Group contends it should be recognized as owner of the mineral rights in its land which was taken by the river. (It concedes its loss of title to the surface of the land now lying within the new riverbed and east thereof.) It argues that its mineral rights in the property did not expire with its mineral leases in 1978. The Clements Group contends that the Freeze Statute creates an implied reservation of minerals in favor of the former landowner and that the taking of the surface by the movement of the river should be likened to a conveyance of the land, made subject to existing mineral leases and mineral rights by operation of law. It further contends that the mineral rights so preserved are imprescriptible. It also objects to the trial court's application of the public records doctrine.

The Operators and the Greer Group

The Operators and the Greer Group agree with the trial court's resolution of the claims of the Clements Group. However, they disagree with the trial court's ruling that

the State Lease only covers the former riverbed instead of moving with the river. They contend that the trial court's narrow reading of the property description contained in the State Lease ignores the conditional nature of the State's title to the riverbed. They describe the riverbed as a "moving target" which by its nature is not stationary. Thus, the State Lease should follow the river wherever it moves. They contend that to hold otherwise would destabilize all of the State's leases affecting water bodies.

Gore and Dauphin Groups

The Dauphin Group's sole complaint about the trial court's opinion is its recognition of the State's mineral rights ownership and the Greer Group's leasehold rights in and to the former riverbed. (Both the Gore and Dauphin Groups contend that the State Lease affects only the present riverbed.) This group argues that the Freeze Statute should be viewed as a limited attempt by the legislature to "freeze" or stabilize rights under mineral leases which are in existence at the time production is actually obtained on the leased property. Under such an interpretation, landowners would not be able to preserve their mineral rights by executing "sham" leases under which production was never intended.

The Gore Group generally concurs with the Dauphin Group. It argues that, under the most reasonable interpretation of R.S. 9:1151, mineral lessors and lessees are protected only when production is taking place when the leased land undergoes a change of ownership as a result of the movement of a navigable stream.

The State

The State supports affirmation of the trial court judgment. The State contends that under the Freeze Statute the 1972 State Lease covered the riverbed as it existed

at the time the lease was executed. The natural movement of the river resulted in new ownership of the surface of the former riverbed, but the new owners of the surface took the land subject to previously executed and recorded mineral lease. Further, the state argues that it also owned the new bed of the river, subject to any existing mineral leases which were executed and recorded prior to the movement of the river. The State argues that when the Clements' 1963 and 1974 leases expired, the effects of the Freeze Statue likewise terminated and the state owned the new bed of the river free and clear of the Clements' former rights to the minerals.

DISCUSSION

We find that the trial court properly interpreted and applied the Freeze Statute to the facts before it. Under the statute, outstanding mineral rights are not affected by a change in ownership of navigable water bottoms. A. Yiannopoulos, Property §46, in 2 *Louisiana Civil Law Treatise* (2d Edition 1980).

As observed by the trial court, the statute clearly and unambiguously applies only when there is a change of ownership of land or water bottoms caused by the action of a navigable stream *and* there is in effect a mineral lease covering and affecting the lands or water bottoms. However, contrary to the assertions of the Gore and Dauphine Groups, the statute does not require that there be actual mineral production from the leased land in order for the statute to be effective.

We have considered the numerous arguments set forth by the Clements Group and find them to be meritless. The statute clearly does not establish imprescriptible mineral rights. LSA-R.S. 9:1152, which specifically grants an imprescriptible mineral servitude to an agency or political subdivision of the State, if the state acquires the land of the agency or political subdivision as a result of the move-

ment of a navigable water body, does not "supplement" the Freeze Statute, R. S. 9:1151. This is made clear by R.S. 9:1152(C), which specifically states:

> Nothing contained herein shall have the effect of modifying or repealing R.S. 9:1151.

Furthermore, the provisions of LSA-R.S. 31:149-151 fail to support the arguments of the Clements Group. These articles of the Mineral Code apply to contractual acquisitions or judicial expropriations of land by the government or certain conservation groups where the act of acquisition or judgment contains a specific reservation of mineral rights. In such cases, the prescription of nonuse does not run against these mineral rights so long as the title is not transferred again.

The Clements Group further complains of the trial court's application of the public records doctrine. Inasmuch as the leases at issue expired prior to the drilling of the unit well, the issue of whether they were recorded in Bossier Parish is of no importance.

Additionally, the Clements Group contends that the trial court did not protect its real rights in the minerals underlying its property, but treated its rights only as personal rights derived from the mineral leases. We see no evidence of such an assumption in the trial court's opinion. To the contrary, the trial court treated these mineral rights as real rights which were subject to termination or alteration due to the movement of the river, all in accordance with Louisiana law. LSA-C.C. Art. 499.

Furthermore, we find no error in the trial court's determination that the State Lease remained with the former riverbed and did not move to the new bed. The lease itself provides a description of the property it covers. It states that it covers land "now or formerly" constituting the riverbed owned by the State on a specific date, September 1, 1972. It does not provide that the lease will

follow the movement of the river. Consequently, we find no merit in the arguments of the Operators and the Greer Group.

In summary, we find that the trial court correctly interpreted and applied the Freeze Statute to the facts before it. The assignments of error pertaining to the application of the Freeze Statute are without merit.

CONCLUSION

Based on the foregoing, the trial court judgment is affirmed. Costs are to be assessed equally among the Clements Group, the Operators, the Greer Group, the Dauphin Group, the Gore Group and the Mobley Group.

AFFIRMED.

APPENDIX B

STATE OF LOUISIANA
COURT OF APPEAL, SECOND CIRCUIT
Shreveport, Louisiana 71101

To: J. Jay Caraway Esq.
BLANCHARD, WALKER, O'QUIN & ROBERTS

Shreveport, Louisiana: February 21, 1991

Docket Number: 21998-CA

Cities Service Oil & Gas, et al

vs.

State of Louisiana, et al

BEFORE JUDGES: Marvin, Norris, Lindsay, Hightower, Victory

As the counsel of record in the captioned case, you are hereby notified that the application for rehearing filed by Plaintiff/Appellant has this date been DENIED.

FOR THE COURT
Diana P. Heisler
Clerk of Court

APPENDIX C

THE SUPREME COURT OF THE STATE OF LOUISIANA

NO. 91-C-0693

CITIES SERVICE OIL AND GAS CORPORATION, ET AL

VS.

THE STATE OF LOUISIANA, ET AL

IN RE: Dauphin Group; Brooks, Mary Hattie D.; Dauphin, E. Eugene Jr.; Dauphin, Mildred; - Defendant(s); Applying for Writ of Certiorari and/or Review; to the Court of Appeal, Second Circuit, Number 21998-CA; Parish of Bossier 26th Judicial District Court, Div. "B", Number 66,048

April 26, 1991

Denied.

JCW
PFC
HTL
LFC

MARCUS, DENNIS & HALL, JJ., would grant the writ.

Supreme Court of Louisiana

April 26, 1991

s/ Frans J. Labranche, Jr.
Clerk of Court
For the Court

APPENDIX D

THE SUPREME COURT OF THE STATE OF LOUISIANA

NO. 91-C-0658

CITIES SERVICE OIL AND GAS CORPORATION, ET AL

VS.

THE STATE OF LOUISIANA, ET AL

IN RE: Gore, O. L. Jr.; Vaughan, Lila Gore; Kimbrell, Mariella Gore; Haynes, Glenda Gore; Bean, May Elizabeth Goodman; Patterson, Frances C. Goodman; Davis, Suzanne Goodman; Goodman, James Patrick; Gore Group; - Defendant(s); Applying for Writ of Certiorari and/or Review; to the Court of Appeal, First Circuit, Number 21998-CA; Parish of Bossier 26th Judicial District Court Div. "B", Number 66,048

April 26, 1991

Denied.

JCW
PFC
HTL
LFC

MARCUS, DENNIS & HALL, JJ., would grant the writ.

Supreme Court of Louisiana

April 26, 1991

s/ Frans J. Labranche, Jr.
Clerk of Court
For the Court

APPENDIX E

THE SUPREME COURT OF THE STATE OF LOUISIANA

NO. 91-C-0674

CITIES SERVICE OIL AND GAS CORPORATION, ET AL

VS.

THE STATE OF LOUISIANA, ET AL

IN RE: OXY USA Inc.; Crystal Oil Company; - Plaintiff(s); Applying for Writ of Certiorari and/or Review; to the Court of Appeal, First Circuit, Number 21998-CA; Parish of Bossier 26th Judicial District Court Div. "B", Number 66,048

April 26, 1991

Denied.

JCW
PFC
HTL
LFC

MARCUS, DENNIS & HALL, JJ., would grant the writ.

Supreme Court of Louisiana

April 26, 1991

s/ Frans J. Labranche, Jr.
Clerk of Court
For the Court

APPENDIX F

Twenty-Sixth Judicial District Court
Bossier Parish, Louisiana

No. 66048

CITIES SERVICE OIL AND GAS CORPORATION, ET AL

VERSUS

THE STATE OF LOUISIANA, ET AL

J U D G M E N T

This cause having been duly heard on a Joint Motion For Partial Summary Judgment on July 27, 1989 and on further Motion for Reconsideration on December 7, 1989, and the Court considering the law, the Stipulations of Fact and the Amended Stipulation of Fact for the purpose of declaring the effect of La. R.S. 9:1151, and for the reasons expressed in the written Opinion dated October 13, 1989, and in Open Court on December 7, 1989,

IT IS ORDERED, ADJUDGED AND DECREED that:

a) For purposes of the application of La. R.S. 9:1151, the November 8, 1972 lease granted by the State of Louisiana covered and applied to any acreage comprising the bed of the Red River lying within the SE/4 of Section 8, Township 23 North, Range 14 West, Bossier Parish, Louisiana on November 8, 1972;

b) La. R.S. 9:1151 is applicable and has maintained the ownership rights of the parties under the 1972 State lease as to the above described acreage despite the acquisition of the acreage by other parties resulting from the movement of the Red River after November 8, 1972;

c) The 1972 State lease affected only water bottoms owned by the State within the Southeast Quarter of Section 8, Township 23 North, Range 14 West, Bossier Parish, Louisiana, as of the date of the lease and did not affect any water bottoms subsequently acquired by the State as a result of movement of the Red River and, particularly, does not affect the present bed of the Red River;

d) La. R.S. 9:1151 is not applicable so as to maintain the mineral rights of Jay S. Clements, et al, to lands in the SE/4 of Section 8, Township 23 North, Range 14 West in Bossier and Caddo Parishes, Louisiana, which were acquired by the State of Louisiana (as to the present bed of Red River) and the Gore and Dauphin Groups (with respect to those lands lying between the bed of Red River as it was situated on November 8, 1972 and the present bed).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all other issues including, but not limited to, the determination of the location and acreage of the 1972 riverbed, and those issues specifically reserved in the Joint Motion of Partial Summary Judgment, shall be considered at the trial of the case or by subsequent disposition thereof.

Benton, Louisiana, this 22nd day of December, 1989.

/s/ Graydon K. Kitchens, Jr.
J U D G E

APPENDIX G

Louisiana Revised Statutes, Title 9

§ 1151. Change in ownership of land or water bottoms as result of action of navigable stream, bay or lake; mineral leases

In all cases where a change occurs in the ownership of land or water bottoms as a result of the action of a navigable stream, bay or lake in the change of its course or bed, or as a result of accretion, dereliction, or other condition resulting from the action of a navigable stream, bay or lake, the new owner of such lands or water bottoms, including the state of Louisiana, shall take the same subject to and encumbered with any oil, gas and/or mineral lease covering and affecting such lands or water bottoms, and subject to the mineral and royalty rights of the lessors in such lease, their heirs, successors and assigns, the right of the lessee or owners of such lease and the right of the mineral and royalty owners thereunder to be in no manner abrogated or affected by such change in ownership.

APPENDIX H

Louisiana Civil Code

Article 482. Accession

The ownership of a thing includes by accession the ownership of everything that it produces or is united with it, either naturally or artifically, in accordance with the following provisions.

APPENDIX I

Louisiana Civil Code

Article 499. Alluvion and Dereliction

Accretion formed successively and imperceptibly on the bank of a river or stream, whether navigable or not, is called alluvion. The alluvion belongs to the owner of the bank, who is bound to leave public that portion of the bank which is required for the public use.

The same rule applies to dereliction formed by water receding imperceptibly from a bank of a river or stream. The owner of the land situated at the edge of the bank left dry owns the dereliction.

APPENDIX J

Louisiana Revised Statutes, Title 31

§ 6. Right to search for fugitive minerals; elements of ownership of land

Ownership of land does not include ownership of oil, gas, and other minerals occurring naturally in liquid or gaseous form, or of any elements or compounds in solution, emulsion, or association with such minerals. The landowner has the exclusive right to explore and develop his property for the production of such minerals and to reduce them to possession and ownership.

APPENDIX K

Louisiana Revised Statutes, Title 31

§ 16. Basic mineral rights; status as real rights

The basic mineral rights that may be created by a landowner are the mineral servitude, the mineral royalty, and the mineral lease. This enumeration does not exclude the creation of other mineral rights by a landowner. Mineral rights are real rights and are subject either to the prescription of nonuse for ten years or to special rules of law governing the term of their existence.

APPENDIX L

Excerpt From Brief Presented to the Trial Court in Regard to Joint Motion For Summary Judgment Filed on Behalf of Mary Hattie D. Brooks, E. Eugene Dauphin, Jr., and Mildred Dauphin, page 3:

"As indicated in the Statement of the Case, the applicability and/or interpretation of the Act constitutes the focal point of each demand or defense made in this joint motion for summary judgment. Consequently, the issues raised regarding application of the Act can be succinctly stated as follows:

(a) Are the co-existing rights of riparian owners and the State of Louisiana regarding movement of rivers and streams and the gain and/or loss of land associated therewith vested and constitutionally protected rights which would necessarily limit any interpretation given the Act?"

APPENDIX M

Excerpt From Brief Presented to the Trial Court in Regard to Joint Motion for Summary Judgment Filed on Behalf of O. L. Gore, Jr., Lila Gore Vaughan, Mariella Gore Kimbrell, Glenda Gore Haynes, May Elizabeth Goodman Bean, Frances C. Goodman Patterson, Suzanne Goodman Davis, and James Patrick Goodman, page 4:

"It is the Gore Group's position that their accretion lands in Section 8 were free and clear of any claims to mineral rights by the State and the Clements Groups."

APPENDIX N

Excerpt From Original Brief Presented to the Court of Appeal, Second Circuit, State of Louisiana, on Behalf of O. L. Gore, Jr., Lila Gore Vaughn, Mariella Gore Kimbrell, Glenda Gore Haynes, May Elizabeth Goodman Bean, Frances C. Goodman Patterson, Suzanne Goodman Davis, and James Patrick Goodman, page 4:

"ARGUMENT:

"I. Is R. S. 9:1151 constitutional?

"The Gore Group would defer to the argument of the Cities Service (Oxy USA, Inc.) - Crystal Oil Company Group on this matter as it has been that Group's contention that the statute is unconstitutional. The Gore Group would support a finding that the statute is unconstitutional but leaves the argument on that point to the Cities Service (Oxy USA, Inc.)-Crystal Oil Company Group."

APPENDIX O

Excerpt From Brief Presented by Oxy USA, Inc. and Crystal Oil Company to the Trial Court in Regard to the Joint Motion For Summary Judgment, page 5:

"Argument

"I.

"The Statutory Exchange of Ownership Between the State and Riparian Owners Which Continuously Occurs With River Movement Maintains For the State and Riparian Owners an Equitable Balance of Constitutionally Protected Property Rights.

"As revealed by Exhibit "A", the State's argument for the ownership of minerals to two non-contiguous riverbeds within the same unit is truly an anomaly. Can this abnormal result from the Act be inscribed over a long-established line of legislation and jurisprudence where strong public policy and constitutional guarantees have governed the shifting of ownership which occurs from a river's movement?"